

**PETITION TO REVIEW EL SALVADOR'S COUNTRY ELIGIBILITY UNDER
THE GENERALIZED SYSTEM OF PREFERENCES (GSP) FOR VIOLATION
OF INTERNATIONALLY RECOGNIZED WORKERS' RIGHTS**

To:

**Chairman, GSP Subcommittee
Office of the United States Trade Representative
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Submitted by:

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I. General Information about Petitioners

The International Labor Rights Fund (ILRF) is an independent non-profit organization headquartered in Washington, DC. ILRF was created in 1986 to promote and defend labor rights worldwide. ILRF achieves this goal through research, publication, public education and outreach, training and advocacy programs in partnership with civil society organizations in developing countries, engagement with international organizations, and legal advocacy. Since the addition of the labor rights clause in the Generalized System of Preferences (GSP), ILRF has filed numerous petitions with the US Trade Representative seeking suspension of trade preferences to countries that failed to comply with internationally recognized worker rights. These prior GSP petitions include: Bangladesh, Cambodia, Columbia, El Salvador, Guatemala, Honduras, Indonesia, Malaysia, Mexico, Peru, Pakistan, Panama, Sri Lanka and Thailand. Each report included an in-depth review of the country's labor rights practices, drawing on a thorough review of the literature (including governmental and NGO reports and academic publications), in-country research and numerous interviews with representatives of labor, civil society and government.

ILRF has also promoted the enforcement of other US laws and programs with labor rights clauses. For example, the Overseas Private Investment Corporation (OPIC) is prohibited from supporting any project that contributes to a violation of internationally recognized workers rights in the host country, as defined by the Trade Act of 1984. In 2000, OPIC began to process an application for financing an political risk insurance to support the construction of a methanol plant by AMPCO in Equatorial Guinea. However, OPIC was concerned that although the laws of Equatorial Guinea recognized the fundamental worker rights, the laws were not always enforced. Indeed, OPIC specifically noted ongoing country practices that limited the exercise of the right to freely associate. In order to perform its due diligence review vis a vis labor rights, OPIC contracted with ILRF to perform a thorough assessment of worker rights in Equatorial Guinea.

The Asociacion Servicios de Promocion Laboral (ASEPROLA) is an independent non-profit non-governmental organization founded in 1985. ASEPROLA is based in San Jose, Costa Rica. Its mission is to provide technical support to the formal sector salaried workers in Central America to better defend, promote and fully exercise their social and labor rights. ASEPROLA has been a major force in the formation of national labor organizations and the consolidation of regional labor organizations in the Central America. In the agricultural sector, for example, ASEPROLA provides research, training, and legal advice to its partners, including for example, Coordinadora Centroamericana de Trabajadores (COCENTRA), Coordinadora Latinoamericana de Sindicatos Bananeros (COLSIBA) and Coordinadora de Sindicatos Bananeros de Honduras (COSIBAH). ASEPROLA has a broad and experienced working relationship with other labor oriented Central American non-governmental agencies (NGOs) and civil society organizations in Panama, El Salvador, Guatemala and Honduras.

As described below, the petitioners believe that El Salvador has systematically failed to comply with internationally recognized workers' rights, as required by 19 U.S.C. § 2462, § 502(b)(2)(G). Therefore, we request that El Salvador's eligibility under the Generalized System of Preferences be placed under review, as a means to bring El Salvador into compliance with these rights.

ILRF previously submitted a petition requesting that El Salvador's country eligibility under the GSP program be reviewed in December 2002.

II. Supporting Information on Violations of Internationally Recognized Workers Rights

Although El Salvador has not ratified ILO Convention 87, it is bound as a member of the ILO to uphold freedom of association under Article 2 of the ILO's 1998 Declaration of the Principles and Rights at Work. However, as previously detailed in our 2002 submission, the ILO has routinely found that the labor code impermissibly restricts workers' freedom of association.¹ For example, only private sector workers and some employees of autonomous public agencies have the right to form unions.² Public sector workers are prohibited from forming unions, although they are allowed to form professional and employee organizations. The government has justified this exclusion on the basis that civil servants provide essential services. However, among those workers who may form unions, the Code erects procedural obstacles that make registration and recognition of the union difficult.

The law also erects significant barriers to the right to strike, including a requirement that 51% of workers in an enterprise, whether or not they are union members, support the strike.³ A strike can only be called if it concerns a change or renewal of a collective agreement or maintaining the workers' professional interests.⁴ Additionally, unions may only strike after the expiration of a collective bargaining agreement and must first seek to resolve any differences through negotiation, mediation, and arbitration before initiating a strike.⁵ Once a union decides to strike, however, the

¹ U.S. Dept. of State, Country Reports on Human Rights Practices – 2001: El Salvador, March 4, 2002.

² Article 204 of the Labor Code states, "Tienen el derecho de asociarse para defender sus intereses económicos y sociales comunes, formando asociaciones profesionales o sindicatos, sin distinción de nacionalidad, sexo, raza, credo o ideas políticas, las siguientes personas: a) los patronos y trabajadores privados; b) los trabajadores de las instituciones oficiales autonomas."

³ Article 529 of the Labor Code provides in part "Si la huelga fuese decidida por la mayoría de los trabajadores de la empresa o establecimiento que estuviese afectado por el conflicto, tal decisión obligará a todo el personal."

⁴ Article 528 of the Labor Code provides "Las huelgas que reconoce este Código, para efectos laborales, únicamente serán aquellas que tengan cualquiera de las siguientes finalidades: 1) la celebración o revisión del contrato colectivo de trabajo; 2) la celebración o revisión de la convención colectiva de trabajo; y 3) la defensa de los intereses profesionales comunes de los trabajadores."

⁵ See Articles 480 et seq. of the Labor Code.

union must first name a strike committee to serve as a negotiator and send the list of participants to the Ministry of Labor, who then notifies the employer. The union must then wait four more days from the time the Ministry notifies the employer before beginning the strike.⁶

In recent years, the ILO's Committee on Freedom of Association has supported complaints filed by Salvadoran unions alleging violations of freedom of association. In 2000, the ILO determined that El Salvador had violated the rights of several unions to freely associate either by means of excessive formalities or exclusions for public sector workers.⁷ For example, the ILO criticized the government's decision to deny the application of five food industry unions to form a federation, the Trade Union Federation of Food Sector and Allied Workers (FESTSA). The ILO found that "although the founders of a trade union should comply with the formalities prescribed by legislation, those formalities should not be of such a nature as to impair the free establishment of organizations."⁸ The ILO held that the government should have asked the federation to submit the missing information rather than to deny recognition.

In the same opinion, the ILO also castigated El Salvador for its refusal to grant legal personality to the Ministry of Education Workers' Union (ATRAMEC) in May 2000. The government had refused to recognize the union on the basis that its members were employed in the public sector. The Committee rejected that view, holding that "the denial of the right of association of public service employees to establish unions is an extremely serious violation of the most elementary principles of freedom of association."⁹ Consequently, the Committee urged the Government "as a matter of urgency to ensure that the national legislation of El Salvador is amended in such a way that it recognizes the right of association of public service employees."¹⁰

The ILO also supported a complaint by the Company Union of Workers of Doall Enterprises S.A. (SETDESA), who was denied recognition as a union by the government. In its defense, the government claimed that it would not recognize the union because, one hour before the foundation of the union, the founders had resigned, the workers who had attempted to establish the union were subsequently reinstated, and other workers established a different union which was granted recognition. Upon reviewing the facts,

⁶ Article 530 of the Labor Code provides, in part "La huelga no podrá estallar antes de haber transcurrido cuatro días contados a partir de la fecha de la notificación a que se refiere el artículo anterior ..."

⁷ See Complaint against the Government of El Salvador presented by the Trade Union Federation of Food Sector and Allied Workers (FESTSA), the Company Union of Workers of Doall Enterprises S.A. (SETDESA) and the Ministry of Education Workers' Union (ATRAMEC) Report No. 323, Case(s) No(s). 2085.

⁸ *Id.* at ¶ 172.

⁹ *Id.* at ¶ 173.

¹⁰ *Id.*

the Committee rejected the government's excuses and "express[ed] its profound regret at the anti-union acts of discrimination and interference on the part of the company."¹¹

The Constitution of El Salvador prohibits discrimination against unions and also provides that union officials at the time of their election, throughout their term, and for one year following their term may not be fired, suspended, removed, or demoted except for legal cause. However, the Labor Code does not require the employers to reinstate them, but rather requires the employers to provide a severance payment. In practice, employers dismiss workers who seek to form unions; the Government typically does not prevent their dismissal or require their reinstatement but may ensure that the severance is paid. Moreover, the ILO has reported instances of employers using illegal pressure to discourage organizing, including the dismissal of labor activists and the maintenance of lists of workers who would not be hired because they had belonged to unions.

In our December 2002 petition, ILRF detailed several cases of unfair dismissal of union leaders for trade union activities. Many of these cases were brought before the ILO's Committee on Freedom of Association. ILRF notes here that the cases detailed in our 2002 submission continue to exemplify the lack of meaningful legal protections for the right to associate in El Salvador. Several additional cases of barriers to the right to associate were detailed by Human Rights Watch in its 2003 report titled "Deliberate Indifference: El Salvador's Failure to Protect Workers' Rights."

We note the recent murder of trade union activist Gilberto Soto as additional evidence that El Salvador has made no measurable progress toward protection for the rights to associate or bargain collectively since our 2002 submission. Soto, a labor organizer with the International Brotherhood of Teamsters (IBT), was shot in the back on November 5 at his family's home in Usulután. Soto, a Salvadoran native residing in Cliffside Park, NJ, had planned to meet with union leaders and port drivers to support their organizing efforts in El Salvador.

The investigation and subsequent arrests carried out by the National Civilian Police (PNC) have raised many concerns for the Soto family as well as for national and international labor and human rights organizations. Salvadoran police officials have insisted from early on that the murder was most likely the result of "personal rivalries" or "common crime," despite the fact that Soto was not robbed, and practically dismissed the possibility that the killing was politically motivated.

Human rights authorities were reportedly repeatedly denied access to the police file on the case in violation of the Constitution. In the days following the crime, the Center for Labor Studies and Support (CEAL) began publicizing information about the murder and promoting a letter-writing campaign pressing for a full investigation. A few days later, the organization's office was broken into and ransacked.

¹¹ *Id.* at ¶ 174

Coming at a time when the national parliament is debating the passage of the Central America Free Trade Agreement (CAFTA), the murder underscores concerns shared by ILRF and ASEPROLA that Central American governments will not be motivated by CAFTA's labor chapter to make any meaningful progress on the implementation of internationally recognized worker rights. Indeed, like many other CAFTA countries, the government of El Salvador may well perceive a perverse incentive to weaken its domestic labor legislation, rather than to harmonize it upward to meet international standards. At present, as detailed here and in former submissions, El Salvador's legislation is far from meeting international standards.

At present, the emergency law for economic reactivation (LERE), which was introduced to the Assembly in 1999, continues in the legislative process in El Salvador. If approved, LERE would modify salaries and working shifts, and increase the allowed length of a trial period for new workers and the use of fixed-term contracts. These changes affect benefits currently guaranteed by labor law, including vacations and social security.

The current Labor Code includes indefinite contracts and a 30-day test period (during which time the contract can be terminated). LERE will make fixed-term contracts and 180-day test periods the norm, which means that the social security payments for these workers are not made for almost 6 months. This lowers costs for employers, by making labor cheaper and working hours more flexible. At the same time, it drastically increases job instability, making it easier for employers to make workers work overtime without extra pay, and to dismiss workers without paying penalties or benefits.

Meanwhile, the privatization of public services has increased, leading to an increase in unemployment and informal sector employment.